**Introduction**

Corporate legal personality is a well-settled principle in legal theory, signifying that a company is a separate and distinct entity from its members. This distinction becomes effective from the date of incorporation, as stated in Section 37 of the Companies and Allied Matters Act (CAMA). Upon incorporation, a company gains the ability to operate as an autonomous entity, capable of owning property, entering contracts, and being sued in its own name.

**Nature of corporate personality:**

A company is a separate entity separate and district from the shareholders who compose it. Akanki was of the view that the distinction between the company as a body corporate and its shareholders described are “corporate personality”: is “the most pervading of the fundamental principles of company law” (Akanki, O, 1980, The Relevance of the Corporate Personality Principle” (1977-80) N.L.J. 9 at p. 10 Section 37 states,

*“As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold hand, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as mentioned in this Act.”* Legal personality is a creature of statute, the law may grant legal personality to any group or persons, being a creation of law, it is artificial, and it may therefore be conferred on groups of people in order to achieve a particular purpose. Historically, the corporate personality had always been used and conferred on religious groups in England. The head of the group is the custodian of all the properties of the group, after his death, property of the group must pass to the successor, the best way to surmount any succession issue is to regard the group as a corporate person and its properties belong to it, and therefore, the current headship does not have any personal right to the property of the group. This was the beginning of the corporation . The religious group was regarded as the ‘person’ and is therefore conferred with the power to hold land and property and also defend same in its own name and does not in any way affect the personal properties of the members. The doctrine that company is a legal entity, existing separate and distinct from its shareholders is a legal theory established upon an expedient theory. The fiction has been introduced for the convenience of the company in making contracts, in holding property, in suing and being sued, in management of its affairs and to preserve the limited liability of its shareholders. It is chiefly for the purpose of clothing association of natural person with characteristic of a distinct entity at law that corporations were invented and are in use (see Kiser D. Barnes, 1992, Cases And Materials On Nigerian Company Law, O.A.U Press Ltd, Ile-Ife, Nigeria, p. 62.

**LEGAL FOUNDATION**

Traditionally, a corporation being a person in law is separate and distinct from its members. But it was not clear whether this also applies to incorporated Joint Stock Companies until the House of Lords decision in the case of Salomon v Salomon and Co. (1897) A.C. 22.

We will try and explain the facts of the case and the decision and it is important that we understand exactly what happened that led to the important decision in company law and understanding of this decision will enable us to have a quick grasp of the fundamental basis of company law. Mr. Solomon carried on business as a leather merchant. In 1892 he formed the company. Salomon and Co. Ltd, Mr. Salomon, his wife and five children holding one share each in the company. The members of the family did not intend taking an active role in the business but rather only held the shares because the Companies Act requires at that time that there be seven shareholders. Mr. Salmon was also the managing director. He thereafter transferred his original business to the company. He did this by valuing the original leather business at ₤39,000. The company paid for this by ₤10,000 worth of debentures giving charge over all the company assets, ₤20,000 in ₤9 shares and ₤9,000 in cash. Mr. Salomon paid off all the creditors of the business in full. Mr. Salomon now owns 20,001 shares and his

family owns the six shares. He was also the owner of the secured debenture. A debenture is simply a document creating or evidencing debt of a company. The name of the business has charged with the addition of the word “Ltd” also the legal status has also changed. Almost

immediately after the incorporation, the company had some difficulties, its customers did not buy its products and therefore the company ran into debts, owing its creditors Mr. Salomon had to sell his debenture to raise money for the company. After another year, the problem

persisted, and the debenture holder now forced the company to go into liquidation in order to realize his money. There was however enough assets to pay off the debenture holder and so the debenture holder Mr. Broderip, sought to challenge the validity of the transaction to

convert the legal status of the business into a company and sought to make Mr. Salomon personally liable for the debts of the company.

Mr. Broderip alleged that the company was a sham and is mere ‘alias’ or agent for

Mr. Salomon. The Court of Appeal in England upheld his claim and held Mr. Salomon personally liable. Mr. Salomon appealed to the House of Lords and the Liquidator took over the matter on behalf of all the creditors against Mr. Salomon. The House of Lords held,

(1) that the company was validly formed according to the Joint Stock Companies Act

1844, which only required that there be seven members, holding one share each.

(2) There was nothing in the act about good faith of the members.

(3) The motives of the shareholders were irrelevant unless there is fraud, Salomon was an

agent of the company, not the company his agent.

Land Machaughten, stated this in explaining the position, “the company is at law a different person altogether from the subscribers and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law in the agent of the subscribers or trustee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act. Lord Hailsbury in his own judgment emphasized the distinction between the company and the subscribers, when he said “either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon. If it was not, there was no person and nothing to be an agent at all, and it is

impossible to say at the same time that there is a company and there is

not.” From the decision, the separate legal entity of the company is quite clearly

acknowledged. The most important fact is whether the company has complied with the Act in the incorporation, if this has been done and it is properly registered with certificate of registration as evidence, then, clearly, it is not the same as the subscribers but has its own separate legal entity. This decision has far reacting implication in company law. It is quite realistic and reasonable interpretation of the Act. Some have criticised it as being fraught with danger, and seems that the creditosr of the company are left unprotected (se Professor

Kahn Freud in 1944 7 MLR).

This decision has been followed in series of decisions. In the case of British

Thompson- Houston Ltd v Sterling Accessories Ltd (1924) 2 Ch. 23 at 38 Tomlin J said

“it has been made plain by the House of Lands that for the

purpose of establishing contractual liability, it is not possible, even in

the so-called one man company to go behind the legal corporate entity

of the company and treat the creator and controller of the company as

real contractor, merely because he is the creator and controller. If he is to be fixed with liability as principal, the agency of the company must be established substantially and cannot be inferred from the

holding of directors office and the control of shares alone (see Salomon v Salomon) any other conclusion would have nullified the purpose for which the creator of limited company was authorized by the legislature.”

**CASE STUDIES**

From the decision in Salomon v Salomon, the following may be deduced

(1) the principle that members do not have proprietary right in the assets of the company. The are not

part owners of the company assets. See Macaura v Northern Assurance Company Ltd (1925)

A.C. 619.

The owner of a timber estate sold the whole timber thereon to a timber company in consideration of fully paid up shares in the company. Subsequently by policies effected in his own name with several insurance companies, he insured his timber against fire. The greater part of the timber was destroyed by fire; he sued the Insurance Company to recover the loss. The claimant was the sole shareholder of the company and was also creditor of the

company to a large extent. It was held;

(1) that the claimant had not either as a shareholder or creditor any insurable interest in the goods.

(2) “Now no holder has any right to any item of property owned by the company for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.”

Lord Wrenbury stated the position beyond doubt, that a member, “even if he holds all

the shares is not the corporation and … neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation.” It follows that, just as corporate personality facilitates limited liability by having the debts belong to the corporation and not the members it also means that the company’s assets

belong to it and not the shareholders se also Mrs. Shonibare& Others v Probate Registrar (1966) All N.L.R.

A company may make a valid and effective contract with one of its members. It is

possible for a person to be at the same time wholly in control of a company (as its principal shareholder and sole director) and a servant employed by that company. In the case of Lee v Lee Air Farming co. Ltd (1950) 3 All C.R. 420.

Lee held 2,999 of the company’s 3000 shares and was the governing director and Chief Pilot on a salary. Whilst working for the company he was killed in an air crash, and his widow claimed compensation from the company on the ground that he had been an employee under a contract of service with the company. It was held by the Privy Council that the company and Lee were separate persons in law. That a man may be acting in one capacity give orders to house of in another capacity and that a man acting in one capacity can make

contract with himself in another capacity.

(3) The company is regarded in law as a person separate and distinct from its members. It makes no difference to the rule that one member owns all or substantially all of the shares. See Gramaphone and Typewriter co. Ltd v Stanley 91908) 2 KB 89.See also Dunlop Nigerian Industries Ltd v Forward Nigeria Enterprises Ltd and Fafore (1976) 1 ALR. Comm. 243.

The Plaintiff employed the first defendant company as custom clearing agent. The

second defendant was the managing director of the defendant company and owned 90% of its shares. The plaintiff paid money to the second defendant for the payment of custom duties on its behalf, this was not paid. The plaintiff thereafter claimed the money from the company and the Managing Director jointly and severally. It was held that the managing director was not liable, because, the fact that he holds 90% of the shares does not make him the same with the company because at law, the company is a different person altogether from the shareholders.

(4) The debts of the company are not the debts of the members. Banque De

L’AfriqueOccidentale v Habu, Illiasu and Savage in re Northern Nigerian Marketing Board

(Ganishees) (1964) N.N.L.R. 30.

**Specific Applications and Consequences**

1. Legal Status and Implications

A very important advantage of an incorporated company is the ability to sue in its own name or being sued. The company being a legal person can take action to enforce its legal rights and can be sued for breach of its legal duties. This continues to be a problem for incorporated companies and other social groups. The problem of suing a large number of persons especially where the membership is not static. In case of incorporated

societies the only solution is to sue them in a representative capacity, that is, if it is possible to identify their officers or leaders. For instance in case of a family under customary law, the law is that the head of family and other principal members of the family are sued or may sue on behalf of the entire family. This problem however as we have noticed above does not exist in case of incorporated companies.

An incorporated company cannot be sued as a division of another company. For example, in Anthony Ehidinmeh v. Ahmadu Musa & United Africa Co. of Nig Ltd, the Supreme Court ruled that GB Ollivant Nig Ltd, an incorporated entity, could not be equated with a division of UAC Nig Ltd.

2. Effects of Incorporation

When a business name is upgraded to a limited liability company, it legally assumes a separate personality. In Habib (Nig) Bank Ltd v. Ochete, the court held that Berlyn Pharmacy Ltd, after incorporation, was a distinct entity from its members.

3. Acts of Branches and Employees

In Agbanelo v. UBN Ltd, the Supreme Court ruled that actions taken by a branch of a company are considered actions of the company itself, establishing the company's vicarious liability for its employees' actions.

4. Ownership of Property

Shareholders do not individually own the company's property and cannot dispose of it on their own. This separation protects the company's assets from personal claims against its members.

5. Debt Responsibility

The debts of the company's members are not the debts of the company. This principle protects the company's financial stability from the personal liabilities of its shareholders.

6. Subsidiary Companies

A subsidiary company operates as a separate legal entity and is not merely an agent of its holding company. It can own and sell property independently, as long as it acts within its legal framework.

**Conclusion**

The doctrine of corporate legal personality is a cornerstone of corporate law, ensuring that companies function as distinct legal entities. This separation is essential for legal and commercial purposes, allowing companies to operate independently of their members.